IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6084 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHKUMAR R CHAVDA

Versus

STATE OF GUJARAT

Appearance:

Ms.Suman Pahwa for
M/S THAKKAR ASSOC. for Petitioner
Ms.Harsha Devani, learned A.G.P. for respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 13/10/2000

ORAL JUDGEMENT

This Special Civil Application is directed against the detention order dated 3.6.2000 passed by the Police Commissioner, Ahmedabad City whereby the petitioner was detained under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985. Since

3.6.2000 the petitioner is detained at Bhavnagar Jail, Bhavnagar.

No reply to the petition has been filed.

The grounds enclosed with the detention order show that a criminal case under Bombay Prohibition Act was registered against the petitioner on 1.4.2000 at Prohibition Station, North Division and that is the solitary case registered against the petitioner. The detaining authority has referred to petitioner's anti social activities and has found the petitioner to be a bootlegger. It has also been mentioned by the detaining authority that his business of unauthorised liquor has become a public threat. On the basis of the solitary ground, as aforesaid, and by a bald mention that his activities have become a threat to public health, even with reference to Kanuji S.Zala's case, reported in 1999 (2) GLH 415, in absence of any cogent and credible material, it cannot be said that it is a case of breach of public order. The activity, to which reference has been made by the detaining authority in the grounds of detention order, may at the most constitute a case of breach of law and order against the petitioner and not a case of breach of public order.

Besides this, the detaining authority has referred to two incidents dated 15.5.2000 and 18.5.2000 with regard to which depositions have been made by the witnesses against the petitioner on 1.6.2000 and 2.6.2000. These statements were verified by the detaining authority on 2.6.2000 and the detention order was passed on the next day i.e. on 3.6.2000 and the detaining authority has invoked Sec.9(2) of the Act. Learned counsel for the petitioner has cited an unreported decision dated 6.10.2000 in Special Civil Application No.8546/2000 wherein the earlier decision of this court rendered in the case of Kalidas Chandubhai Kahar v. State of Gujarat, reported in 1993(2) GLR 1659 was considered wherein it was held that the detaining authority's satisfaction stands vitiated and that it is a case of wrong exercise of power under S.9(2) of the Act. In this view of the matter it is found that in the facts of this case also, it is a case of wrong exercise of power under S.9(2) of the Act.

For the reasons, as aforesaid, the impugned detention order dated 3.6.2000 passed by the Police Commissioner, Ahmedabad City cannot be sustained in the eye of law and the same is hereby quashed and set aside.

The respondents are directed to release the petitioner Rameshkumar Rajuji Chavda forthwith from the Bhavnagar Jail, Bhavnagar where he is detained since 3.6.2000, in case he is not required to be detained in any other matter. This Special Civil Application is allowed. Rule is made absolute.

(M.R.Calla,J)